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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,886	01/31/2004	Yinong Yang	UAF-03-14	8057
34607 7590 01/12/2007 ANGELA FOSTER, PHD, ESQ. 2906 BIRCHWOOD COURT NORTH BRUNSWICK, NJ 08902-3933			EXAMINER KUMAR, VINOD	
			ART UNIT 1638	PAPER NUMBER .
			MAIL DATE 01/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/768,886

Applicant(s)

YANG ET AL.

Examiner

Vinod Kumar

Art Unit

1638

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address.--

THE REPLY FILED 11 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: _____.
Claim(s) rejected: 6-10, 26-28, 31-32, 35-36, 38, 42, 44 and 51-55 (claims at final rejection).
Claim(s) withdrawn from consideration: 11-25, 29, 30, 33, 34, 37, 39-41, 43 and 45-50.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____


PHUONG T. BUI
PRIMARY EXAMINER

Continuation of 3. NOTE: The new limitations in claims 6-8, 27-28, 31-32, 36, 42, 51, 52, and 53 were not previously presented and would require further search and/or consideration.

Continuation of 11. does NOT place the application in condition for allowance because: In the paper filed on December 11, 2006, Applicants argue that claims 6-8, 27-28, 36, and 51-53 have been amended to recite the phrase "wherein SEQ ID NO: 1 is expressed under abiotic stress conditions of 4 oC and "wherein SEQ ID NO: 1 is expressed under abiotic stress conditions of 4 oC in the host cell". Applicants further argue that because of this amendment the claimed invention is not anticipated by Wen et al. or obvious under U.S.C. 103(a) (response, filed December 11, 2006).

Applicant's arguments were fully considered but were not found persuasive. Office maintains that amended claims do not overcome rejections of record stated in the previous Office actions. Furthermore, it is noted that the amended claims raise new issues under 35 U.S.C. 112, 1st and 2nd paragraphs, 35 U.S.C. 102(a) and 35 U.S.C. 103(a) which would require further search and/or consideration. In response to new limitations to the amended claims as argued by the Applicants, it is important to note that property of expression of SEQ ID NO: 1 encoding SEQ ID NO: 2 under abiotic stress condition of 4 oC is inherent to the nucleotide sequence taught by Wen et al. Accordingly, Office maintains that the amended claims filed December 11, 2006 do not overcome the rejections stated in the Office action mailed on September 7, 2006.